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footwear, said first and said third portions of said X-strap assembly forming an X-configuration over the user's instep, and

an adjustable fastener for adjusting the length of said X-strap assembly.

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#### REMARKS

Applicants have carefully reviewed and considered the Official Action, and have amended the subject application in a sincere effort to place the application in condition for allowance. Reconsideration is respectfully requested.

The specification has been amended to clearly specify that the term "sole" does not include an insole, but the sole proper, including a unitary sole, or a midsole or an outsole as those terms are commonly used in the art. In addition, the specification has been clarified to state that the channel is substantially perpendicular to a longitudinal axis of the sole as illustrated in Fig. 4.

In the drawings, Applicants request leave to show the footwear, in this case a sandal, in solid lines as all the claims of the application now positively recite an article of footwear comprising a sole.

In response to paragraph 1 of the Official Action, it is submitted that the specification complies with Section 112 of the Patent Act. Antecedent basis for the claim terminology "resilient plastic" may be found at page 13, line 9. Further, claims 10 and 25 that required "resilient plastic" have been cancelled and the new claims do not utilize this terminology.

In response to paragraph 2 of the Official Action, Applicants have cancelled claims 1-25 and have submitted new claims 26-51. The new claims now positively recite "a sole" and "a transverse channel extending ... under ... said sole ..." so that it is clear that the sole is a part of the claimed combination, and not merely a statement of intended use.

The new claims have been revised to eliminate or correct confusing, vague or indefinite language. Specifically, the claims do not include objected terminology: "the length of", "the vertical", "from the group comprising", "second end coincident with the heel portion", or "reasably fastened". Independent claims 26, 36, 41, 46 and 50 refer to -- a wearer's instep -- at the first mention of this environmental reference point, in lieu of the objectionable "the wearer's instep". Claims 29, 37, 43 call for -- a horizontal plane -- in lieu of "the horizontal". In all the claims, proper antecedent basis has been provided for "the instep".

In response to paragraphs 3 through 6, it is submitted that the rejections under 35 USC 102 (and 103) are now moot as claims 1-25 have been cancelled without prejudice. The cancellation of claims 1-25 is not intended to create an estoppel. Applicant traverses the 35 USC 102 (and 103) rejections, but in the interest of compact prosecution will focus arguments on claims 26-51. New claims 26-51 are not anticipated by either *McBride* or *Gibson*. In particular, it is noted that *McBride's* strap 24b' (Fig. 4) extends under only the insole 30b and does not extend under any portion of sole 11, 12, 13. Similarly, *Gibson's* strap 12 does not extend under the sole 1.

Specifically, *McBride* Fig. 4 has a strap passing under only the insole. This is done for keeping the strap in place for donning purposes. *McBride*, col. 4, lines 23-29. *McBride* does not intend to structurally connect the midfoot of the sole to the wearer's

midfoot. Indeed, *McBride's* strap 20 is identified as a "heel strap" to "create a force to pull the rear portion of the foot of a wearer downward and back into a steadfast engagement with the footwear to provide a positive rear-foot control ...." *McBride*, col. 3, lines 38-44. Note, *McBride* anchors to the heel of the footwear while Applicants' focus is on anchoring at the midfoot, center of gravity.

In *Gibson*, strap 12 will pull flap 6 to the wearer's arch. The flap thus provides arch support. See *Gibson*, col. 2, lines 40-42. Claims 44, 46 and 50 call for an instep strap that is connected to the sole at four points, namely the lateral and medial sides of the midfoot portion of the sole, and the lateral and medial sides of the heel portion of the sole. *Gibson* connects at the medial side, but does not connect to the midfoot lateral side of the sole. Similarly, *McBride* connects only at the heel, not at the midfoot.

Claims 31, 38, 41, 47 and 50 call for a shank below at least a portion of the midfoot portion of the sole, a transverse channel extending through the shank. Neither *Gibson* nor *McBride* disclose a shank under the sole. *Scheinhaus* Patent No. 4,200,997 mentions a "shank" (col. 3, line 19), but *Scheinhaus* appears to use the term merely to refer to a center portion of the sole, rather than as discrete structural member.

The claims are not anticipated by the *Scheinhaus* patents. The *Scheinhaus* '997 patent shows straps slideable in channels passing through or under the sole (col. 3, lines 15-25). However, *Scheinhaus's* strap system is quite different from that claimed by Applicants. *Scheinhaus* shows a strap 13 that forms an X-configuration over the wearer's instep. However, this strap 13 is connected to the sole at the forefoot and midfoot. It does not connect to the heel portion of the sole. Instead, this strap loops around the wearer's heel contrary to Applicants' teachings. *Scheinhaus* employs a second strap 12

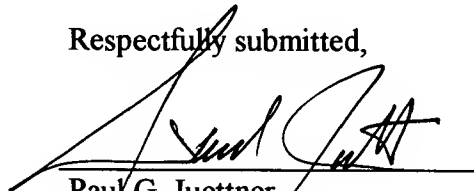
that connects to the lateral and medial sides of the heel, but this strap does not form an X over the instep. Accordingly, *Scheinhaus* teaches away from Applicants' claimed invention.

In response to paragraphs 7 through 10 of the action, Applicants submit that the references cannot be logically or properly combined to render obvious Applicants' claimed invention. The references do not remotely suggest the combination or the benefits that flow therefrom as expressed in the pending claims. In fact, *McBride* is concerned with a heel-lock strapping system, not a midfoot stabilization system. *Gibson* discloses an arch support flap. *Gibson* and *Scheinhaus* teach away from the invention as their straps encircle the wearer's forefoot, ankle and/or Achilles heel. Further there is no motivation or suggestion in the art for selecting any individual features from these disclosures to render obvious the invention claimed by Applicants. The combination claimed is non-obvious.

### CONCLUSION

With the foregoing Amendments and Remarks, Applicant believes the present application to be in a form suitable for allowance, with the claims specifying a novel and non-obvious combination of elements, and respectfully requests the same.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Paul G. Juettner', is written over a horizontal line.

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